IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NOS. 13620; 13635; 13636 AND 13638 OF 2004

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WRIT PETITION NO : 13620 of 2004

Between:

ITC Limited, an existing Company within the meaning of

Companies Act, 1956, having its registered office at
Virginia House, 37, Chowringhee, Kolkata - 700 071 and a

Branch Office for its Tobacco Division at S.D. Road,
Secunderabad - 500 003, Rep. by its Branch Manager,

Mr. Ashish E. Paul.

..... PETITIONER

AND

1. The Commercial Tax Officer, Commercial Tax Department,

S.D. Road Circle, Secunderabad.
2 The Commissioner of Commercial Taxes, State of A.P.

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to a)

Call for the records pertaining to the Impugned Order and Demand dated 7-5-2004 for the assessment year 2002-03 from the Respondent No.1 viz, The Commercial Tax Officer, S.D. Road Circle, Secunderabad. b) Quash the Impugned Order/Demand by issuance of a writ, more particularly one in the nature of a writ of Certiorari or any other appropriate writ, order or direction, while declaring the same as totally arbitrary, non-est and without jurisdiction.

For the Petitioner: Mr.C.R.Sridharan, Advocate.

For the Respondents: GP FOR COMMERCIAL TAX.

WRIT PETITION NO : 13635 of 2004

Between:

ITC Limited, an existing Company, within the meaning of

Companies Act, 1956, having its registered office at
Virginia House, 37, Chowringhee, Kolkata-700 071 and a

Branch Office, for its Tobacco Division at S.D. Road,
Secunderabad - 500 003. rep by its Branch Manager,

Mr. Ashish E Paul.

..... PETITIONER

AND

1. The Commercial Tax Officer, Commercial Tax Department,

S.D. Road Circle, Secunderabad.

2. The Commissioner of Commercial Taxes, State of A.P.,

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to (a) Call for the records pertaining to the impugned Order and Demand dated 06/4/2004 for the assessment year 1996-97 from the Respondent No. 1 Viz., The Commercial Tax Officer, S.D. Road Circle, Secunderabad. b) Quash the impugned Order/Demand by issuance of a Writ, more particularly one in the nature of a Writ of Certiorari or any other appropriate Writ, order or direction, while declaring the same as totally arbitrary, non-est and without jurisdiction.

For the Petitioner: Mr.C.R.Sridharan, Advocate.

For the Respondents: GP FOR COMMERCIAL TAX.

WRIT PETITION NO : 13636 of 2004

Between:

ITC Limited, an existing company, within the meaning of

Companies Act, 1956, having its registered office at
Virginia House, 37, Chowringhee, Kolkata - 700071 and a

Branch office for its Tobacco Divisio at S.D.Road,

Secunderabad – 500 003, represented by its Branch Manager

Mr. Ashish E. Paul.

..... PETITIONER

AND

1. The Commercial Tax officer, Commercial Tax Department,

S.D.Road Circle, Secunderabad.

2 The Commissioner of Commercial Taxes, State of A.P.,

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to a) Call for the records pertaining to the Impugned order and Demand dated 01/05/2004 for the assessment year 1999-2000 from the Respondent No.1 viz., The Commercial Tax officer, S.D.Road circle, Secunderabad; b) quash the Impugned order/Demand by issuance of a writ, more particularly one in the nature of a writ of Certiorari or any other appropriate writ, order or direction, while declaring the same as totally arbitrary, non- est and without jurisdiction.

For the Petitioner: Mr.C.R.Sridharan, Advocate.

For the Respondents: GP FOR COMMERCIAL TAX.

WRIT PETITION NO : 13638 of 2004

Between:

ITC Limited, an existing Company within the meaning of

Companies Act 1956, having its registered office at
Virginia House, 37, Chowringhee, Kolkata -700 071 and a

Branch Office for its Tobacco Division at S.D. Road Sec'bad,

rep by its Branch Manager Mr.Ashish E Paul.

..... PETITIONER

AND

1. The Commercial Tax Officer, Commercial Tax Department,

S.D. Road Circle, Secunderabad.

2 The Commissioner of Commercial Taxes, State of A.P,

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to a) Call for the records pertaining to the Impugned order and Demand dated 24/04/2004 for the assessment year 1997 - 98 from the Respondent No.1 viz., The Commercial Tax officer, S.D.Road circle, Secunderabad; b) quash the Impugned order/Demand by issuance of a writ, more particularly one in the nature of a writ of Certiorari or any other appropriate writ, order or direction, while declaring the same as totally arbitrary, non- est and without jurisdiction.

For the Petitioner: Mr.C.R.Sridharan, Advocate.

For the Respondents: GP FOR COMMERCIAL TAX.

The Court made the following:

COMMON ORDER: (per Sri B. Sudershan Reddy, J)

The petitioners in this batch of writ petitions challenge the proceedings of the 1st respondent requiring them to pay the interest at the rate of 36% per annum under Section 16 (3) (12) of the Andhra Pradesh Tax on Luxuries Act, 1987 on the ground that they have failed to pay the tax due in the stipulated time. The constitutional validity of the Act itself had fallen for consideration of the Supreme Court in ***GODFREY PHILLIPS INDIA LTD v. STATE OF UP***. The Supreme Court held that the State Legislature has no power to levy luxury tax on tobacco or tobacco products. Thus the petitioners are not required to pay any luxury tax itself and therefore, the question of payment of interest on tax does not arise. The subject matter that arises for consideration is squarely covered by the decision referred to hereinabove.

Following the said decision, these writ petitions are allowed. The impugned notices are accordingly quashed.

However, the respondents shall have the benefit of the observations made by the Supreme Court in paragraphs 97 and 98 of the said judgment. There shall be no order as to costs.

(B. Sudershan Reddy, J)

21-04-2005

(C.V. Ramulu, J)

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To

1. The Commercial Tax Officer, Commercial Tax Department,

S.D. Road Circle, Secunderabad.

2 The Commissioner of Commercial Taxes, State of A.P.

Hyderabad.

3 Two CCs to the Government Pleader for Commercial Tax,

High Court of Andhra Pradesh, Hyderabad (OUT).

4. Two CD copies.